Theatrical Protective Union Local 1, I.A.T.S.E., AFL-CIO *and* Gurena A.G. Ltd. and Motion Picture Studio Mechanics Local 52, I.A.T.S.E., AFL-CIO. Case 2-CD-651

24 February 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

The charge in this Section 10(k) proceeding was filed 15 July 1981 by the Employer (Gurena) alleging that the Respondent, Theatrical Protective Union Local 1, I.A.T.S.E., AFL-CIO (Local 1), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Motion Picture Studio Mechanics Local 52, I.A.T.S.E., AFL-CIO (Local 52). The hearing was held on 4 and 15 September, 4 and 9 November, and 2 and 7 December 1981 and 20 September 1982 before Hearing Officer Carole Sobin.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company is a Swiss corporation doing business in New York and was engaged, at all times material, in motion picture production in New York, New York. Its projected revenues for the year following September 1981 exceeded $1 million and during the year preceding September 1981, a representative period, it purchased goods and materials valued in excess of $50,000 directly from locations outside the State of New York. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 1 and Local 52 are labor organizations within the meaning of Section 2(5) of the Act.[1]

II. THE DISPUTE

A. *Background and Facts of Dispute*

From about the beginning of June 1981 until mid-August 1981,[2] the Employer was filming a motion picture entitled "King of Comedy" at the Reeves Teletape Studio in New York City. The Employer had leased that facility, normally utilized for television productions, as a setting for a fictionalized television program to be portrayed in the film. As part of the lease agreement, the Employer obtained the services of the six "housemen" (two carpenters, two propmen, and two electricians) who were regularly employed at Reeves. The six housemen were actually employees of a company named Imero Fiorentino Associates, Inc., which had an agreement to supply stagehands and lighting directors and equipment to Reeves and which also had a collective-bargaining relationship with Local 1. The Employer also directly hired shooting crew members, construction crew members, and set decorators, all of whom were represented by Local 52. Employees hired were in the classifications of soundmen, shop craftsmen, electricians, propertymen, set decorators, grips, and generator men. In April, following the hire of certain crewmembers, the Employer entered into a collective-bargaining agreement with Local 52 covering all those job classifications.

About the end of March, after having been advised by the Reeves representative to inform Local 1 of the Employer's use of the facility, Robert Colesberry, the Employer's production manager, met with Richard Nimmo, the TV business manager of Local 1. Nimmo told Colesberry that his local had jurisdiction over the Reeves studio, that the Employer was going to have to utilize a split crew,[3] meaning an equal number of members of Local 1 and Local 52, and that any sets had to be constructed in a Local 1 shop and carry a Local 1 seal or the sets would not be permitted into the Reeves studio.[4]

About the first week of April, Colesberry informed Michael Proscia, president of Local 52, of his conversation with Nimmo. Proscia said that, if the Employer were going to deal with Local 52, Local 52 would construct sets.

The first period of filming, which involved exterior shots of the studio, began about 2 June. The day before, Nimmo asked and was told by Coles-

[1] Both Locals 1 and 52 admit employees to membership and exist, in whole or in part, for the purpose of collective bargaining about wages, hours, and other terms and conditions of employment. The Board has previously found both Local 1 and Local 52 to be labor organizations within the meaning of Sec. 2(5) of the Act. *Stage Employees IATSE Local One (Twentieth Century-Fox)*, 255 NLRB 955 (1981).

[2] All dates are in 1981 unless otherwise indicated.

[3] According to Nimmo, the split crew count was to exempt the Local 52 soundman and the department heads.

[4] Nimmo generally denied saying that the sets would not be permitted into the studio. He claimed to have told Colesberry that he would do everything he could legally to protect the work of his membership.

berry that seven employees who were represented by Local 52 would be involved in the exterior filming. Nimmo told Colesberry he would then have to use seven Local 1 members (in addition to the six housemen). Nimmo also told Colesberry that all the Local 1 members were to be paid a double rate; i.e., the Local 52 rate in addition to the Local 1 rate. Colesberry did not agree to such wage rates. He testified that, because the first shoot was scheduled for the next night and he was concerned with a work stoppage, he did not protest to Nimmo at that time.

Shooting began on 2 June with seven Local 1 members (in addition to the six housemen) as well as the Local 52 crewmembers. The following evening, only six additional Local 1 members were sent to the job. The additional Local 1 members continued to work throughout the first period of shooting which ended about 6 June.[5] During that week, Colesberry sought the release of the additional Local 1 members from a Reeves representative. The representative explained that Reeves had been told that the Local 1 members could not be let go unless Local 52 members were released as well.

Also during that week, Colesberry spoke to Proscia about arrangements for the second shooting period which was to involve filming and videotaping inside the studio. Proscia told Colesberry that the Employer had to honor their contract and had to have the scenery constructed by Local 52. Thereafter, on 4 June, Colesberry sent Proscia a letter advising that Nimmo was demanding a split local 1/Local 52 work force throughout the second shooting period and requesting Local 52's help in working out an accommodation. In a 9 June response from Local 52's counsel, Colesberry was referred to a Board decision involving another dispute between Local 52 and Local 1 and informed that a breach of the Employer's contractual obligations concerning work assignment could result in litigation as well as a possible work stoppage.[6]

About 10 June, Colesberry and Executive Producer Robert Greenhut met with a Local 52 representative and Nimmo. The Employer sought agreement about the distribution of jobs during the second shooting period and about constructing the sets. No agreement was reached. Colesberry and Greenhut then spoke to Nimmo alone and proposed a manning agreement of one Local 1 member for each two Local 52 members, with three of the housemen to be included in the Local 1 count and three to be exempted. Colesberry testified that he was led to believe at that time that the arrangement was acceptable. Also, at some point during the meeting, according to Colesberry, Nimmo repeated that the sets would not be allowed into Reeves' studio without a Local 1 seal.[7] The following week Nimmo rejected the Employer's proposal and again insisted on a split crew. Thereafter, Colesberry ordered set construction to be done by employees who were represented by Local 52.

Subsequently, at a meeting on or about 15 July, the Employer proposed the same compromise to Nimmo, who reiterated Local 1's demand for a split crew. According to Colesberry, after he told Nimmo that the sets, which were constructed by Local 52 members, were going to be brought to the studio, Nimmo implied that the sets without a Local 1 seal would not be permitted into the studio.[8]

Preparation for interior shooting began about 16 July. The Local 1 contingent on that Thursday and Friday, 16 and 17 July, consisted of the six housemen and five additional Local 1 members whom the Employer requested. Colesberry testified at the hearing that the additional Local 1 members were requested "to avoid labor problems." There were also about 15–16 crewmembers working who were represented by Local 52.

On or about Friday, 17 July, Imero's representative, Linda Hobkirk, notified Colesberry that she was not ordering the additional Local 1 members because the Employer was paying these employees only the Local 1 rate.[9] During their discussion, Colesberry complained about the pay rates and the fact that the Employer did not need the additional Local 1 members.

On Monday, 20 July, the Local 1 housemen did not carry out their duty of turning on the house

[5] Colesberry testified that Local 1 members who worked during the period in question were hired by and paid through Reeves and Imero Fiorentino and not directly by the Employer. The Employer was billed for their services by Reeves, who was in turn billed by Imero.

[6] No charges were filed against Local 52.

[7] Nimmo in contrast to Colesberry described this meeting as occurring about 3–4 weeks after the end of the exterior shooting. He admitted discussing manning and wage rates for Local 1 members, but did not describe, as did Colesberry, an indication that the Employer's proposal was acceptable to Local 1. He testified that he told Colesberry that Local 1 never relinquished the right to build scenery in its Local 1 shops for motion pictures, but that the scenery could be built on the studio premises with the work split between Local 1 and Local 52. As noted above, Nimmo generally denied the threat regarding the scenery.

[8] Nimmo claimed that by this time he had received direction from the Union's International president to permit scenery into the studio and that he advised Imero Fiorentino to relay that information to Gurena. Colesberry claimed that Hobkirk, an Imero Fiorentino representative, did inform him that scenery built by Local 52 members had been cleared for use in the studio, but that, when he sought confirmation from Nimmo, Nimmo denied having heard from the International president. Nimmo denied having any conversation about scenery with any Gurena representative after his conversation with the International president.

[9] Before each shooting period, Nimmo told Hobkirk the wage rates he had allegedly worked out with the Employer; Imero then charged Reeves those rates plus a percentage for its services.

lights. As a consequence, no employees began work at the 8 a.m. starting time. At or about 8:30 a.m., Colesberry was notified that no work was being performed. When he subsequently arrived at the studio, the Reeves representative told him that the Local 1 housemen were concerned about the failure to call in the additional Local 1 members and about the rate the Local 1 members would be paid. The Local 1 housemen said they would have to speak to Nimmo. Nimmo arrived at the studio at 10:30 a.m. Thereafter, there were discussions among Colesberry, Greenhut, the Reeves representative, Hobkirk, Nimmo, and another Local 1 representative. The split crew and double rates were discussed. Nimmo admitted at the hearing that there was a dispute that morning and that it involved Gurena's not wanting to hire the additional Local 1 members and not wanting to split the crew. Hobkirk testified that work did not proceed because the additional Local 1 members had not been ordered and acknowledged that what was required at the time to get the work started was for the additional Local 1 members to be ordered.[10] One of the Local 1 housemen admitted that Nimmo told him that morning to simply wait until the matters were resolved before doing any work. Early that afternoon, even though the wage rate issue remained unresolved, the Employer ordered the additional Local 1 members and all employees began working. Hobkirk testified that the additional Local 1 members were "standing by" because they expected to be called in. The sets were scheduled to be delivered to the studio that morning and arrived while discussions were taking place. There was conflicting testimony as to whether the delay in bringing the sets into the studio was occasioned by the dispute or by an employee lunch break.

B. *Work in Dispute*

The disputed work involves the handling of props, sets, and equipment and electrical and construction work related to the film production of a motion picture entitled "King of Comedy" by Gurena A.G. Ltd. at Reeves Teletape Studio, 234 West 81st Street, New York, New York.[11] The disputed work specifically does not involve that work performed by the six housemen in operating the "house" equipment.[12]

C. *Contentions of the Parties*

The Employer and Local 52 both contend that reasonable cause exists to believe a violation of Section 8(b)(4)(D) has occurred based on Nimmo's alleged threats not to permit scenery into Reeves without a Local 1 seal and based on the 20 July work stoppage. They maintain that the work in dispute should be assigned to employees represented by Local 52 because of the contractual relationship between the Employer and Local 52, Employer preference, area practice, skills, and economy and efficiency.

Local 1 contends that there is no reasonable cause to believe a violation occurred for several reasons: (1) Nimmo denied having threatened not to allow the sets into Reeves without a Local 1 seal, (2) Colesberry was told by the Imero Fiorentino representative that there was no longer a dispute over which employees were to construct the scenery, (3) prior to the 15 July filing of the 8(b)(4)(D) charge, which gave rise to this 10(k) hearing, there is no evidence of violative conduct, (4) the incident on 20 July was not a work stoppage as the employees were not directed to perform work while the parties were discussing wage rates and as the International's permission to engage in a work stoppage was not obtained, and (5) the dispute on 20 July concerned wage rates and not work assignment. Local 1 also contends that, assuming that there was a cognizable 8(b)(4)(D) violation, employees whom it represents were entitled to share the work in dispute because of the area practice, efficiency, and skill.

D. *Applicability of the Statute*

As described above, according to Colesberry, Nimmo repeatedly threatened that scenery would not be permitted into the studio if it were not constructed by Local 1 members.[13] Further, Nimmo repeatedly insisted that the Employer use a split crew and the evidence indicates that a work stoppage occurred on 20 July in support of Local 1's position on the manning issue. The work stoppage

[10] Hobkirk also testified that Greenhut directed that the lights be turned on that morning when he arrived but that his direction was not carried out until after the additional Local 1 members were called.

[11] The parties did not explicitly agree on a description of the work in dispute. The Board has adopted those portions of the description set forth in the Regional Director's notice of hearing which comport with the parties' contentions, as set forth in their respective briefs, and which comport with the record submitted.

[12] During the hearing, both the Employer and Local 52 took the position that they had had no objection to Imero's continued employment, on behalf of Reeves, of the six housemen during the filming and that the housemen were utilized to handle Reeves' stage equipment normally used for television production.

[13] We note that Local 1 has not contended that it disclaimed interest in the set construction work. Further, we do not find that Local 1 effectively disclaimed such work at the hearing. International President Diehl testified that Nimmo asked him, in general terms, whether Local 52 was entitled to build sets for use in filming at a Local 1 studio and Diehl responded that it was if built in a location close to the studio; Diehl did not recall the date of the conversation. Nimmo claimed the conversation occurred on 14 July and that Diehl told him to permit the sets into the studio. If this conversation occurred on that date, it preceded the 15 July conversation described by Colesberry in which Nimmo again allegedly implicitly threatened to interfere with receipt of the sets at the studio. Moreover, in his testimony, Nimmo denied giving up Local 1's "rights" to the set construction for "King of Comedy" filimg at Reeves.

arose when Local 1 housemen failed to perform their duties apparently because extra Local 1 members had not been hired for work that day in accord with Local 1's split crew formula. After Nimmo arrived at the site, and while production was halted, Nimmo asserted Local 1's position by continuing to ask how many extra Local 1 members the Employer wanted to work that day and by continuing to insist on a split crew. He also told one of the Local 1 housemen to await the outcome of his meeting with the Employer before commencing work. When the Employer agreed to utilize the same number of extra Local 1 members as had been utilized the previous workday, production commenced.

To proceed with a determination of dispute, the Board need not find that a violation of Section 8(b)(4)(D) occurred. It must find only that reasonable cause exists for finding such a violation. Moreover, the Board is not precluded from considering contradicted testimony in finding reasonable cause.[14] Accordingly, we are not precluded from finding reasonable cause here because of Local 1's version of the facts for which there is contradictory record evidence and testimony.[15] Nor do we find, as Local 1 argues, that absence of permission from the International Union to engage in a work stoppage is dispositive of whether a work stoppage attributable to Local 1 occurred. Finally, Local 1's contention that the postcharge conduct here may not support a reasonable cause finding is without merit. Even assuming the absence of precharge conduct to support a reasonable cause finding, we would find it appropriate to consider Local 1's 20 July conduct since the factual and legal issues concerning the conduct have been fully litigated and briefed, the issues were related to the allegations of the charge, and the conduct occurred while the charge was pending.[16]

Therefore, since the evidence indicates that Local 1 claimed the disputed work for its members and there is evidence that it sought to enforce its claim by means of threats and a work stoppage, without ruling on the credibility of the testimony at issue, we find reasonable cause exists to believe that a violation occurred. And, since there is no evidence of a method for voluntary adjustment of this dispute to which the parties have agreed to be bound, we find no voluntary method exists for the resolution of this dispute. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Collective-bargaining agreements

Gurena and Local 52 are parties to a collective-bargaining agreement, executed on 16 April 1981,[17] which covers employees within the general job category of soundman,[18] as well as the categories of shop craftsman, electrician, propertyman, set decorator, grip, and generator man. The agreement states:

> No person other than an employee hereunder shall be permitted to handle, place, operate or procure scenery, property, special effects, electrical effects, electrical equipment, sound effects, sound accessories, playback or equipment at any time, or to construct any of the foregoing where such work is done by or under the control of the employer; and no interchangeability among the crafts shall be allowed.

It also states:

> The employer recognizes Local 52 jurisdiction when video tape is utilized on a given feature or television series covered by this collective-bargaining agreement with respect to propertymen, grips, electricans and shop craftsmen, it being understood and agreed that the above stage crafts shall be utilized in the manner and as described along their craft lines as set forth in this collective-bargaining agreement with respect to film production.

Neither Gurena nor Reeves had a collective-bargaining relationship with Local 1. Reeves had an agreement with Imero Fiorentino to supply, among

[14] *Stage Employees IATSE Local One*, supra; *Laborers Local 383 (Floor Covering Specialists)*, 222 NLRB 950 (1976).

[15] Local 1's factual assertions which are contradicted directly or by import are that: Nimmo did not threaten to deny entry into the studio of the sets, Colesberry was unequivocally told before 20 July that there was no longer a dispute about set construction, the Employer gave no direction to work on 20 July, and the only dispute among the parties on 20 July concerned wage rates.

[16] See *NLRB v. Fant Milling Co.*, 360 U.S. 301 (1959).

[17] This contract, entitled the "Feature and Series Production Contract," had effective dates from 1 November 1978 to 31 October 1981.

[18] Local 1 did not claim the work of employees in the soundman category.

other employees, stagehands,[19] and, in turn, Imero Fiorentino did have a collective-bargaining relationship with Local 1. As of the period involved here, the last prior contract had expired and negotiations were being held for a new contract. The last prior contract stated:

> I. Scope of Agreement: (a) This Agreement covers the employment by the Company, at its television studios, theatres, stages, shops and other facilities in New York City, at all remote locations in New York City to the extent heretofore or hereafter mutually agreed upon, of Shop Heads, Head Stagehands, Carpenters, Electricians, Propertymen, Stage and Shop Apprentices, Extra Men and other classifications of employees as hereinafter mentioned, used on or in connection with the *setting up, assembly and presentation of television performances*, the dismantling and "taking in" and "taking out" of all props, scenery and equipment covered hereunder and the servicing in connection with such work (including any warehouse crews, ramp crews, trucking crews, prop crews, night crews, dressing crew and utility crews to the extent specified in any statement of operational procedures attached hereto) whether for live television, video tape recording, closed circuit, kinescope or other types of electronic recording, or for other related purposes *(except motion picture film)*. Whenever a studio, threatre or other facility is used for any purpose related to television broadcasting involving the performance of work within the scope of Local One's jurisdiction hereunder, such work is recognized as coming within the scope of this Agreement. As used herein, the words "studio, theatre or other facility" shall include any area of the Company from which it originates or picks up any program or part thereof for television broadcasting.
>
> In addition, this Agreement shall cover the employment of stagehands for any stagehands' work that may be required where a television studio or theatre is used by the Company for such purposes as, but not limited to, stockholders' meetings, forums, formal presentations to groups of employees, client presentations or meetings of affiliates (in which case the regular basic crew and any additional necessary help shall be assigned).
>
> This Agreement also covers the employment of stagehands for construction work at the construction shop(s) of the Company in New York City.
>
> These provisions shall not be construed as requiring any particular number of men for such work." [Emphasis added.]

It also stated:

> This Agreement shall be binding upon any lessee, succcesor or assign operating any theatre or studio covered hereby for the production of television programs (except motion picture film).

Hobkirk testified that the contract's jurisdictional exclusion of motion picture film meant to her that such work, performed in a facility which was covered by the contract, was not specifically governed by the contract and would require separate negotiations.

In his testimony, Nimmo referred to a provision in the Local 1 contract which stated that the "scope of agreement" provision was intended to include not only existing practices but those mutually agreed on in future. He claimed that it was a past practice to "split crews" when filming was being done at facilities with which Local 1 had a contract, although he acknowledged that such practice had not been acknowledged in writing between itself and employers with whom it contracted.

Here, Gurena, the employer in control of the production,[20] had a collective-bargaining agreement only with Local 52.[21] The Local 52 agreement clearly covered the work in dispute. In contrast, even assuming a relationship among the parties to warrant the applicability of the Local 1 agreement, its terms not only appear facially not to cover the work in dispute, but also appear to exempt at least the motion picture film part of the work in dispute from its jurisdiction. Accordingly, we find that the agreement between Gurena and Local 52 favors assignment of the work in dispute to employees represented by Local 52.

[19] Imero's so-called master contract with Reeves, a contract Imero had with Reeves' predecessor and which Linda Hobkirk indicated was generally applicable to Reeves, provided that Imero would supply stagehands and lighting directors, who would otherwise be employed directly by Reeves. The contract did not obligate Reeves to a certain level of manning.

[20] The question of who was in control of the production was a factor in other cases in which producers had collective-bargaining agreements with the union while the facilities at which production was occurring, or the agents of the facilities, had collective-bargaining agreements with another union. *Stage Employees IATSE Local One*, supra at 957–958; *Stage Employees IATSE Local 84 (CBS, Inc.)*, 218 NLRB 1312 (1975).

[21] Local 1 argues that the collective-bargaining agreement between Gurena and Local 52 cannot be relied on because it was signed after only one employee was hired. The evidence does not demonstrate that Gurena's precontract hiring was limited to one employee or constituted less than a representative number of employees.

2. Company preference

The record establishes that Gurena preferred to assign the disputed work to employees represented by Local 52. This factor, while not determinative, favors an award of the work to employees represented by Local 52.

3. Area and industry practice

There appears to be no dispute that motion picture production companies assign work on feature films in New York City such as that in dispute here to employees represented by Local 52. The Employer's executive producer, Robert Greenhut, testified that 90 percent of the films shot in New York City employ crewmembers represented by Local 52 and the remainder employ crewmembers represented by NABET. He acknowledged that there were some employees represented by Local 1 who had been utilized in the New York City filming of at least one film of which he was aware,[22] but he did not know whether Local 1 had a contract with the producer of that film or in what capacity the Local 1 members were used.

Local 1 asserts that it is the practice for crews to be split between employees represented by Local 52 and employees represented by Local 1 when performing work such as that in dispute at locations in New York City at which Local 1 has an established collective-bargaining relationship. The relationship on which Local 1 bases its claim appears to be between it and the facilities used or the employing agents of the facilities used. Further, Nimmo claimed that, if scenery is built for, but away from, a New York City film location at which Local 1 has an established collective-bargaining relationship, it has been the practice for employees represented by Local 1 to construct the scenery; on delivery of the set to the location, he maintained it would be handled by a split crew.

Local 1 points to a 1962 "ruling" as the formalization of the split crew practice, which "ruling was issued by Diehl, the then assistant International president and current International president. The ruling, in pertinent part, was as follows: (1) if a property where Local 1 has a contract or history of bargaining closes on a temporary basis and then temporarily reopens for the purpose of making a motion picture, then the production crew, with the exception of the sound crew, shall be split equally between Local 1 and Local 52, and (2) if a property where Local 1 has a contract or history of bargaining closes with a definite notice of dismissal to the crew and such property is leased or rented to a motion picture producer for a definite period of time during which only motion pictures are to be made, the entire crew are to be furnished by Local 52 for the entire time in which motion pictures are produced. While Diehl testified that he considers the ruling to still be in effect, he also testified that in 1962 he was not empowered under IATSE's internal rules to issue rulings because he was not then an elected official. He also stated that Local 52 has never admitted to being a party to the ruling, although it did not appeal it within the Union's governing structure at the time it issued. Finally, Diehl explained that no film producers were present when this ruling was promulgated and the ruling has not been accepted by any film producer while Diehl has been president.

Local 1 also points to a variety of arrangements it has made when films were being shot at legitimate theatres, arenas, concert halls, and movie theatres at which it had a collective-bargaining relationship. The Employer's witness specifically described six motion pictures and one television program filmed between about 1967 and 1981 in such locations during which there was crew splitting or what was referred to as "an approximation" of crew splitting between employees represented by Local 1 and those represented by Local 52. In only the filming of the televison production and one motion picture did Local 1 establish a collective-bargaining relationship with the film's producers; it appears that in the remaining circumstances the crew splitting was arranged through the facilities used or the facilities' operating agents. It also appears that on each filming specifically described the basic crew of housemen remained employed. In none of these circumstances was the arrangement between the facility and the production company described. And, no examples were given of specific films involving such crew splitting being shot at television or videotape studios; the seven examples given involved legitimate theatres. Further, while television programs were filmed on two occasions at the Reeves studio documenting the process of making "Sesame Street," the television program regularly videotaped at the studio, Hobkirk testified that there was no need for crew splitting on either occasion because those film crews were small and were only present while a large Local 1 crew was engaged in actual production of "Sesame Street."

We do not find the 1962 ruling to be a significant fact in determining this dispute principally because

[22] This film, "Turning Point," was shot, in part, in a theatre at which employees represented by Local 1 were regularly employed. According to Local 1 Business Manager Robert McDonald, the arrangement on that film involved the employer's use of housemen and other employees represented by Local 1 for all theatrical work on the stage, the employ of a specified number of crewmen represented by Local 52, and crew splitting between employees represented by Local 52 and those represented by Local 1 for all other crewmembers needed.

the evidence indicates the absence of agreement to this manning procedure in practice among both the Locals and motion picture producers. We also note the parties' failure to explain the circumstances to which the provisions of the ruling apply, their failure to conclusively show which provisions applies to the circumstances of this case, and, similarly, their failure to show that the circumstances in which crew splitting occurred were directly occasioned by the ruling.

Further, while there was evidence that crew splitting has occurred when motion pictures were filmed at facilities at which Local 1 had a collective-bargaining relationship, we do not find that the examples given demonstrate an area practice of crew splitting. The examples each appears to involve discrete and individual circumstances, with distinct arrangements negotiated for each film. We also note that, in only one of the crew splitting examples given, was it indicated that employees represented by Local 1 had built the sets away from the movie location; in the other arrangements as described, whether written or oral, exclusive jurisdiction of Local 1 for off-location set construction (when Local 1 had a collective-bargaining relationship at the location) does not appear to have been a part of the arrangements. Accordingly, we find that evidence with respect to the factors of industry agreement and area practice does not favor assignment of the work to employees represented by either Local 52 or Local 1.

4. Relative skills

The Employer's first shooting period at Reeves involved only filming work around the outside of the studio. During the second shooting period, which involved production inside the studio, there were about 10 days of preparation work, 5 days of videotaping, and 3 days of filming.

Local 1 and Local 52 both represent employees who generally possess skills required to perform the work in dispute. It appears that Local 52 has traditionally represented employees who work on motion picture film productions while Local 1 has traditionally represented employees employed at legitimate theatres, some television theatres, and studios and arenas. It further appears that employees represented by both Unions have experience when videotape is being used.

In asserting its position that employees whom it represents were more skilled than their counterparts represented by Local 52 to perform certain functions on this film, Local 1 emphasized the producer's interest in videotaping segments to appear as if an actual television production was being made. Since both the housemen and other employees represented by it who worked on "King of Comedy" were familiar with the equipment at Reeves and had worked on actual videotape television production at Reeves, it claims that their skills were better adopted to coordinating with the television director and accompanying crew involved in the production of the television sequences.

Both the Employer and Local 52 stressed that "King of Comedy" was a motion picture being filmed at Reeves, that the videotape shot was incorporated into the film and never intended for independent direct broadcast, and that employees represented by Local 52 were more familiar with the equipment and techniques used in filming motion pictures.

As the particular work in dispute at the Reeves facility appears to have involved two types of work for which employees represented by Local 52 and Local 1 were respectively more familiar, but as employees represented by both Local 52 and Local 1 possess similar skills and as the dispute between the Locals did not involve a division of the work based on the work with which their members were most familiar (but rather involved simple crew splitting), we find that the evidence concerning this factor does not favor assignment of the disputed work to employees represented by either Local 52 or Local 1.

5. Economy and efficiency of operations

The evidence presented and arguments made with respect to this factor correspond to those made in a case involving a similar dispute—filming of a motion picture at a facility at which Local 1 had a collective-bargaining relationship—between Local 1 and Local 52.[23] Here, as well as in that case, the Employer and Local 52 point to the cohesiveness and efficiency that develop and the consistency of the product when the same crew is utilized throughout the filming of a motion picture. They also point to the inefficient and potentially uneconomic choice the Employer is faced with by a demand for a split crew when it does filming at a facility at which Local 1 has a collective-bargaining relationship: it may lay off half of its existing crew and temporarily replace them with employees represented by Local 1, thereby disrupting staff continuity and creating the risk of losing those laid off to other jobs, or it may unnecessarily double the size of its crew. It appears that the Employer here was obliged to call in extra employees represented by Local 1 whom it did not require.

Local 1 contends that utilization of a split crew involving additional Local 1 employees was effi-

[23] *Stage Employees IATSE Local One*, supra.

cient because of their familiarity with house equipment. It maintains that disruption of the crew at Reeves was minimized because it sought only a split crew and not exclusive assignment of the work.

We are persuaded that, since the work in dispute is one part of a film project, since the Employer seeks to achieve a certain efficiency and technical and creative consistency by the use of a crew that will continue to work throughout the project, since employees represented by Local 52 traditionally perform film work and also possess the skills to perform all the work in dispute, both efficiency and economy of operations are served by assignment of the work to employees represented by Local 52.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 52 are entitled to perform the work in dispute. We reach this conclusion relying on the applicability of the collective-bargaining agreement between the Employer and Local 52, the promotion of economy and efficiency, and the preference of the Employer. In making this determination, we are awarding the work to employees represented by Local 52, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.[24]

[24] Local 52 seeks an award covering the particular work in dispute here as well as that same work on film productions in any facility or studio, including, but not limited to, legitimate theatres, Madison Square Garden, the Colesium, the Metropolitan Opera House, or other places of amusement. Local 52 made the same request in *Stage Employees IATSE Local One*, supra. We find here, and the Board found therein, that film producers encompassed by Local 52's request have not participated in this proceeding and that it is "inadvisable" to issue an award involving employers who have not had an opportunity to participate or give evidence in the proceeding. See also *Plumbers Local 345 (Acme Sprinkler Co.)*, 210 NLRB 22, 25 (1974). We further note that there may be considerations at other jobsites which have not been presented here. Further, there is no evidence that any further productions of the Employer will involve circumstances similar to those involved here. Accordingly, we deny Local 52's request to expand the scope of our award beyond the Employer in this proceeding and the jobsite in question.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Gurena A.G. Ltd. represented by Motion Picture Studio Mechanics Local 52, I.A.T.S.E., AFL-CIO, are entitled to perform the handling of props, sets, and equipment and electrical and construction work, with the exception of that work performed by the six housemen in operating the house equipment, related to the film production of a motion picture entitled "King of Comedy" by Gurena A.G. Ltd. at Reeves Teletape Studio, 234 West 81st Street, New York, New York.

2. Theatrical Protective Union Local 1, I.A.T.S.E., AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Gurena A.G. Ltd. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Theatrical Protective Union Local 1, I.A.T.S.E., AFL-CIO, shall notify the Regional Director for Region 2 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.